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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 564

NATIONAL CAN CORPORATION,
Appellant,

vs.

STATE TAX COMMISSION OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

APPELLANT'S BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS

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BRIEF IN OPPOSITION TO MOTION TO DISMISS

This Brief in opposition to Appellee's Motion to Dismiss is filed pursuant to Rule 16(4).

QUESTIONS PRESENTED

The four questions presented are adequately stated in Appellant's Jurisdictional Statement (pp. 3-4).

Appellee's Motion to Dismiss has greatly modified the form of Appellant's statement of the questions, combining Questions 2 and 3 in one discussion.

Stripped of the language favoring one side or the other, the questions are:

1. The invalidity of the classification made by Chapter 73, Laws of Maryland, 1958;

2. The invalidity under the Due Process Clause of the so-called "inflation" allowance in real estate assessments directed by Chapter 73;

3. Appellant's standing under the Equal Protection Clause to object to systematic undervaluation of real estate where the valid effective provisions of the statute require both real and personal property to be assessed at "full cash value";

4. The invalidity of retroactive application of Chapter 73 under the particular facts shown.

ARGUMENT

The Motion to Dismiss should be denied, since the federal questions presented are substantial and of far-reaching importance.

QUESTION NO. 1.

Invalidity of the Classification

Appellee, at page 5 of its Motion to Dismiss, sets forth the proposition that, "The Equal Protection Clause Does Not Require That Personalty and Realty Be Subjected to the Same Tax Burden." Appellant does not question the correctness of this proposition as a general statement of the law. However, the proposition itself and the cases cited are wholly inapplicable to the present case and completely fail to meet the issue raised in Appellant's Question No. 1.

The vice of the statute complained of, Chapter 73 of the Laws of Maryland, 1958, is not that it fixes different rates of taxation, or different percentage rates of assessment, and thus imposes a different tax burden on real property

from that on personal property. The vice of the whole basis of the classification and attempted discrimination lies in the legislative direction that assessors, in their uncontrolled discretion, reduce assessments only on real estate to an indeterminate extent.

The statute, in effect, prescribes that both real and personal property be assessed at "full cash value"; and then states that the assessors shall take into account the vague and undefined factor, "inflation", as to real estate but not as to personal property. Such an attempted classification is unreasonable, unsupported by any legal authority, and unfounded on any factual basis.

Moreover, the issue as to reasonable classification under Question 1 cannot properly be considered except in relation to the vagueness and invalidity of the so-called standard of "inflation" as discussed under Question 2, since the statute is a mere colorable attempt to separate real and personal property into classes, actually designed to legalize an identical discriminatory practice previously invalidated. Granted that the "inflation" allowance is invalid, it follows that the classification itself, based solely thereon, is unreasonable and invalid.

QUESTION NO. 2.

Invalidity of the Undefined "Inflation" Allowance Under the Due Process Clause.

Both the Appellee in its Motion to Dismiss (page 6), and the Court of Appeals majority in their opinion (Jur. St., page 43), concede the probable invalidity of the undefined and unlimited discretion for reduction of real estate assessments given assessors by Chapter 73. For the reasons well stated in Judge Henderson's dissent (Jur. St., 51-53) and discussed in Appellant's Jurisdictional Statement at

pp. 11-12, the "inflation" allowance furnishes no valid legal standard and is not sustainable under the Due Process Clause.

In addition to the authorities previously cited, we further call attention to *State ex rel. Wyatt v. Ashbrook*, 154 Mo. 375, esp. pp. 392-396, where authority was given to a license commissioner to fix a rate of license tax between maximum and minimum limits set by the legislature. Such uncertainty in tax legislation was held to be beyond the power of the legislature. It is also well settled that the taxing power cannot properly be delegated to purely administrative officers. Gray, Limitations of the Taxing Power, 274, 283; *State v. Mayor & C.C. of Des Moines*, 103 Ia. 76, 72 N.W. 639; *Board of Commrs. v. Abbott*, 52 Kans. 148, 158, 34 Pac. 416.

QUESTION No. 3.

Appellant Has Standing to Raise the Question of the Vagueness of the Term "Inflation" as a Factor in Reducing Real Estate Assessments.

Virtually conceding that the statutory provision for indefinite inflationary allowances to real estate is invalid under the Due Process Clause, Appellee only questions the right of Appellant, a personal property taxpayer, to raise this issue. In support of the obvious principle that a party raising constitutional objections to a statute must show that he is injured thereby, Appellee cites *Roberts & Schaefer Co. v. Emmerson*, 271 U.S. 50, 54. However, in that case the Plaintiff was benefited, not injured, by any discrimination arising under the questioned provision of the statute.

The injury to Appellant, whose personal property is subjected to the same ad valorem tax rate, as that for real estate, is direct and apparent. Undervaluation of real

property, as compared with full valuation of personal property, requires a higher over-all general tax rate whereby Appellant and other personal property taxpayers are forced to assume a portion of the burden which should rightfully fall upon real property taxpayers. The standing of Appellant to raise this question is thus apparent because:

1.

On the assumption that the directed allowances for "inflation" in real estate assessments are invalid under the Due Process Clause, the statute must be read without the provision for such allowances.[1] When it is so read, it then requires that "real property . . . be assessed at the full cash value thereof" (Chapter 73, Sec. 14(b)(1)) and that "personal property . . . be assessed at the full cash value thereof" (Sec. 14(b)(2)). Thus, even if there is a valid division of real property and personal property into separate classes, as the Court of Appeals held, both classes are subject to a statutory direction of assessment, at "full cash value".[2] While different boards or assessors (i.e.,

[1] The separability clause, Section 5, provides that "if any one or more sections, clauses, sentences, words or parts of this Act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof but shall be confined in its operation to the specific provisions so held unconstitutional or invalid . . ." The Court of Appeals in its opinion determined that the separability clause was applicable in this case. 220 Md. at pp. 436-437; 153 A. 2d at p. 298.

[2] The Court of Appeals, assuming that the inflation allowances were invalid, sustained the separate classification of real and personal property. It did not, however, state whether or not it would read the statute without these provisions as to "inflation". If, as a matter of interpretation of State law, the "inflation" allowance is still recognized by the Maryland Court, this Court cannot thereby be precluded from considering the Federal questions (1) of the invalidity of the allowances as a violation of Due Process and (2) of the consequent injury to complainant under the Equal Protection Clause.

local assessors as to realty and the State Tax Commission as to corporate personalty) are charged with making the respective assessments, both are legally obligated to reach the same result of "fair cash value".

Thus comes into play the reasoning of Chief Justice Taft (then Circuit Judge) in the leading case of *Taylor v. Louisville and N.R. Co.* (C.C.A. 6th, 1898), 88 Fed. 350, where the court held that a railroad was entitled to complain of an assessment of its property, as a valid separate class of utility property, at a rate higher than that of *other classes of property where the governing law as to valuation was the same*, since "the whole assessment on all classes of property is to be regarded as one judgment".

In passages, quoted with approval by this Court in *Greene v. Louisville & I.R. Co.*, 244 U.S. 499 at p. 518, Justice Taft said at page 372 of 88 Fed.:

> "An intentional undervaluation of a large class of property, when the law enjoins assessment at true value, is necessarily designed to operate unequally upon other classes of property to be assessed by other taxing tribunals, who, it may be presumed, will conform to the law."

Continuing at page 374, he said:

> "The various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded as one judgment. If any board which is an essential part of the taxing system intentionally, and therefore fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law, makes the whole assessment, considered as one judgment, a fraud upon the fully-assessed property."

Where the valid governing law requires that two classes of property be assessed uniformly, or according to the same standard, the rule of the *Taylor* and *Greene* cases remains unimpaired. In *Williams v. Chicago & N.W.R. Co.*, 273 U.S. 670, this Court affirmed a District Court decision (unreported) in a per curiam opinion, on the authority of the *Greene* case and the *Taylor* case, seemingly as federal constitutional decisions. The *Greene* case, while distinguished in *Nashville, C. & St. L. Ry. Co. v. Browning*, 310 U.S. 362, and in *First National Bank v. Weld County*, 264 U.S. 450, at p. 454, has never been questioned by this Court.[3]

It therefore makes no difference to the outcome of the present case whether the division of property into broad separate classes of realty and personalty is recognized notwithstanding the invalidity of the "inflation" allowances; for a holder of one class of property is nevertheless entitled to complain of systematic underassessment, not only of other property "in the same class" but of other classes of property required by law to be assessed pursuant to like principles of valuation. *Greene v. Louisville & I. R. Co.*, *supra*; *Taylor v. Louisville & N.R. Co.*, *supra*.

2.

Whether a complainant has standing to challenge a statute under the federal Constitution is itself a federal question and is in no sense concluded by the decision of the State court. *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522.

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[3] Compare the similar line of cases in which, in lieu of a property tax, corporations of a certain class are taxed according to a formula, which should produce the "just equivalent in amount." See *Railway Exp. Agency v. Virginia*, 358 U.S. 434, 436, stating the principle of *Postal Tel. Cable Co. v. Adams*, 155 U.S. 688, 696, and indicating that a gross disparity would violate due process.

Four cases were cited by the Court of Appeals in addition to the *Roberts & Schaefer Co.* case for its conclusion that Appellant lacked standing to challenge the "inflation" allowances.

In *Seaboard Commercial Corp. v. State Tax Commission*, 181 Md. 234, 29 A. 2d 294, the taxpayer had no tax-exempt securities, and it therefore could not challenge a tax on its capital stock by reason of the statute's failure to provide for the deduction of exempt securities. The taxpayer was not injured by this provision.

In *Atkinson v. Sapperstein*, 191 Md. 301, 309, 60 A. 2d 737, at p. 739, the Court stated the same conclusion, "One whose rights are not affected by a statute cannot raise the question of its constitutionality."

In *Hess v. Mullaney*, 213 F. 2d 635, decided on the authority of the *Roberts and Schaefer Co.* case, the court denied relief on the ground that plaintiff was not affected unfavorably by the statute.

People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E. 2d 362, was decided entirely on the interpretation of State constitutional provisions. No federal question was involved or discussed, and three judges dissented as to the conclusion.

In the present case, Appellant is directly and substantially injured by the "inflation" allowances retroactively granted to real property owners. If the allowances are invalidated under the Due Process Clause and the assessments equalized, as the law and the Equal Protection Clause would then require, Appellant's personal property assessment will be reduced from 30 to 40 per cent to compensate for the intentional discriminatory undervaluation of real estate. All property, real and personal, will then

be subject to the same rate of tax on values similarly determined, and thus no class of taxpayer will be required to bear an unfairly disproportionate share of the common, general property tax burden. The injury to Appellant, due to the unconstitutional statute, is real, direct and of a large pecuniary magnitude.

QUESTION NO. 4.
Invalidity of the Retroactive Application of the Statute.

Appellee's motion as regards this point is adequately answered (1) by the facts shown in the Jurisdictional Statement (pp. 14-15) which show that this case goes beyond the "recent transactions rule" as stated in *Welch v. Henry*, 305 U.S. 134, and (2) by the state of the decisions, which have not thus far sanctioned a retroactive general property tax.

CONCLUSION

For all of which reasons it is respectfully submitted that Appellee's Motion to Dismiss should be denied.

Respectfully submitted,

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